2288.

SUPREME COURT OF THE UNITED STATES.

No. 86.

JOHN C. HAYS, Plaintiff in Error,

vs.

THE PACIFIC MAIL STEAMSHIP COMPANY.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE NORTHERN DIST. OF CALIFORNIA.

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UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the Judge of the District Court of the United States for the Northern District of California, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said District Court before you between the "Pacific Mail Steamship Company," plaintiffs, and John C. Hays, defendant, manifest error hath happened, to the great damage of the said John C. Hays, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first day of the December Term, one thousand eight hundred and fifty-four, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States.

[SEAL.] JNO. A. MONROE,
Clerk.

By ALEX. M. SCHELL,
Deputy.

DISTRICT COURT OF THE UNITED STATES,
For the Northern District of California:

PACIFIC MAIL STEAMSHIP COMPANY
vs.
JOHN C. HAYS, late Sheriff of the County of San Francisco, and Collector of State and County Taxes for the County of San Francisco.

The complaint of the above named plaintiffs respectfully shows to this Court, that they are an incorporate company, incorporated under the laws of the State of New York, under the style of Pacific Mail Steamship Company, of which State their president, directors, and all their stockholders are residents and citizens, and that the defendant is a citizen of the State of California, and a resident therein.

That the principal office of the plaintiffs for the transaction of their business is located in the City of New York, in the State of New York aforesaid, and that they have, for the better transaction of the business in which they are engaged, agencies in the City of Panama in the Republic of New Grenada, and in the City of San Francisco, in the State of California aforesaid.

That they have also a naval dock and shipyard at the Port of Benicia, in this State, with all necessary appliances for furnishing and repairing their steamers, that, upon the arrival of said steamers in the Port of San Francisco, they remain there no longer than is necessary to land their passengers, mails, and freight, which ordinarily is done in one day, when they proceed to the Port of Benicia, which is a port of entry, situate in the Straits of Carquinez, thirty-five miles from the mouth of the bay and City of San Francisco, and there remain for repairs and refitting until the commencement of their next voyage from San Francisco, ordinarily some ten or twelve days.

That the business in which they are and have been engaged, is in the transportation of passengers, merchandise, treasure, and the United States mails between the said City of New York and the said City of San Francisco, by the way of the City of Panama, and between the said City of San Francisco and different ports in the Territory of Oregon.

That they are the sole owners of the steamships Constitution, Oregon, Panama, California, Tennessee, Columbus, Republic, Northerner, Isthmus, Columbia, Carolina, and Fremont; that no portion of any of them is owned by any citizen or citizens of the said State of California; that said steamships are all ocean steamships, employed solely in navigating the waters of the ocean; that they have all been duly registered at the custom-house in the said City of New York, in which said city all their owners reside. That by an Act of Congress, approved March 3d, 1847, entitled, "An Act providing for the building and equipment of four Naval Steamships," it was provided that the Secretary of the Navy should contract, on behalf of the Government of the United States, for the transportation of the mail in steamships or in sailing vessels, from said port of Panama to such port in the Territory of Oregon as he might select, and that it should be the duty of the said Secretary of the Navy to provide in such contracts to be made by him that the navy department should, at all times, exercise control over said steamships, and, at any time, have the right to take them for the exclusive use and service of the United States. That under and by virtue of said Act of Congress, a contract was made and entered into on the sixteenth day of November, 1847, between the then Secretary of the Navy and Arnold Harris, a copy of which contract is as follows:—

"This agreement, made the 16th day of November, A. D. 1847, "at the City of Washington, in the District of Columbia, between

"the United States of America, by the Secretary of the Navy "thereof and Arnold Harris, of the State of Arkansas—

Witnesseth, That whereas, by an Act of Congress approved March third, 1847, entitled 'an Act providing for the building and equipment of four Naval steamships,' it is made the duty of the Secretary of the Navy, in the 5th section thereof, to contract on behalf of the Government of the United States, for the transportation of the mail from Panama to such port as he may select in the Territory of Oregon, once a month each way, so as to connect with the mail from Havana to Chagres, across the Isthmus: and whereas, proposals for this service have been invited by advertisement from the Navy Department, dated May 4th, 1847, and the offer of said Harris has been deemed advantageous for the United States, now, therefore, it is agreed between the parties aforesaid, and the said Harris does hereby bind himself and his assigns, that he will transport the U. S. Mail as required by said Act of Congress, and for the consideration hereafter named, from Panama to Astoria, in the Territory of Oregon, or to such other port in said Territory as the Navy Dept. may select, once a month each way for the term of ten years, from the first day of October, A. D. 1848; that to this end he will furnish not less than three sea-steamers, two of which shall be of not less than one thousand tons burden each, and the other shall be of not less than six hundred tons burden, and all of them to be well constructed, suitable in all respects for the intended service, and to be approved or rejected, each of them, before leaving the port of New York, by competent inspectors, acting under the direction of the Navy Department; that he will touch at one or two intermediate points on the coast of said Territory with said steamers aforesaid, when required so to do by the Secretary of the Navy, and that he may touch at such other ports as he may select without causing failure in performing the service; and that he will execute, during the continuance of this contract, such instructions as the Navy Department may deem it necessary and proper from time to time to give, for the proper care and preservation of the mails, and their prompt receipt and delivery at the points of departure and arrival herein indicated; that he will convey on board of each of said steamers, and suitably accommodate and support a Government agent, free of charge, and that he will, in all respects, faithfully comply with all the conditions of the Act of Congress and the advertisement hereinbefore referred to. And the said Harris further agrees, that the said line of steamers shall sail from New York, unless detained by orders from the Navy Department, on or before the first of October, A. D. 1848; that said steamers shall be so constructed as to be easily converted into war-steamers; that the Navy Dept. shall at all times exercise control over them, and shall at any time have the right to take them for the exclusive use and service of the United States, and to direct such change in their machinery and internal arrangements as the said Secy. may

require, the cost of such changes to be ascertained by the bills actually paid therefor, and the proper compensation for the value of the steamers, when so taken by the United States, to be determined by appraisers to be mutually chosen by the parties, on which basis and determination payment shall be made for such changes on such steamers, by the United States to said Harris, or to his assigns.

And the United States, by the Secretary of the Navy aforesaid, in consideration of the premises, do hereby promise and agree to pay to the said Arnold Harris, contractor, or to his assigns, as a compensation for the service hereinbefore stipulated, the full sum of one hundred and ninety-nine thousand dollars per annum, payable quarter yearly in the United States, upon the fair performance by the said Harris of the service heretofore stipulated, according to the just intent and meaning of this contract.

It is understood and agreed further, by the parties aforesaid, that this contract shall continue in force for the term of ten years from the 1st October, 1848, unless annulled by Congress, and that Congress may, at any period during its coming session, direct it to cease upon such conditions of equity and fairness as it may think it just towards the contractor to establish. And it is also understood and agreed, that no payment is to be made under this contract at any time before Congress shall have made the appropriations necessary for that purpose, but payment shall be made according to such appropriations. In testimony whereof, we have hereunto placed our hands and seals the day and year above written.

Signed, ARNOLD HARRIS. [SEAL.]
J. Y. MASON. [SEAL.]
Sec'y Navy.

Signed, sealed, and delivered in presence of
S'd, WM. H. DAVIDSON,
SAM'L L. HARRIS."

That said last-mentioned contract was on the nineteenth day of November, 1847, duly assigned for full value by the said Arnold Harris to William H. Aspinwall, a copy of which assignment is as follows:—

I, Arnold Harris, the party mentioned in the preceding contract, for value received, do hereby fully and absolutely assign, transfer, and make over to Wm. H. Aspinwall, of the city and State of New York, his executors, administrators, and assigns, the preceding contract entered into between me and the Hon. J. Y. Mason, Sec'y of the Navy of the United States, together with all my right, title, and interest in, to and under the same, and all benefit and advantage to be derived from, and in consequence of the same.

In testimony whereof, I have hereunto set my hand, and affixed

my seal, at the said City of New York, this 19th day of Nov'r, in the year 1847.

S'd, ARNOLD HARRIS.

Signed, sealed, and delivered in the presence of
S'd, STANHOPE ENGLISH.

That after the making of said last-named assignment, the interest of the said William H. Aspinwall became, and still is vested in the plaintiffs.

That, by an Act of Congress, approved the 3d day of August, 1848, entitled, "An act making appropriations for the naval service for the year ending the 30th June, 1849, the Secretary of the Navy was directed to make advances to the contractors for the transportation of the mails in steamships for the route, among others, between Panama and Astoria, for the purpose of enabling them to finish the steamships contracted for, under their respective contracts, the said advances to be expended in finishing said steamships, to the satisfaction of the Secretary of Navy.

That in and by an Act of Congress, approved the 3d day of March, 1851, entitled "An act making appropriations for the year ending the 30th of June, 1852, the Secretary of the Navy, and the Postmaster-General, by and with the consent of the contracting parties respectively, were authorized to rearrange the running of the United States mail steamers, so as to afford more direct dispatch between the ports of the United States and the Isthmus of Panama; that in and by said act, the trips of the steamers on the Pacific line were directed to be increased to semi-monthly, and that the service on said Pacific line should be performed in steamers built according to the specifications, and subject to all the clauses of contract, so as aforesaid made by the Secretary of the Navy with Arnold Harris.

That on the 13th day of March, 1851, a contract was made by the Secretary of the Navy and the Postmaster-General, under and by virtue of said last mentioned act of Congress with the plaintiffs, through their President, William H. Aspinwall, a copy of which contract is as follows:—

Whereas, in the act of Congress making appropriations for the naval service of the United States, approved by the President, on the 3d of March, 1851, it is provided that the Secretary of the Navy and the Postmaster-General be authorized, by and with the consent of the contracting parties respectively, to rearrange the running of the United States Mail steamships, so as to afford more direct dispatch between the ports of the United States and the Isthmus of Panama, Provided that the Postmaster-General shall maintain a semi-monthly mail between Charleston, Savannah, and Havana during the continuance of the said contract, and also to make the service between Panama, California, and Oregon, conform with the service required by the existing contract on the Atlantic side of

the Isthmus, by increasing the trips of the Pacific line to semi-monthly. Provided, that the said increased service on the Pacific side shall be at a rate not exceeding seventy-five per cent. upon the amount now paid for Pacific service, and to be performed in steamships built according to the specifications, and subject to all the clauses of the A. Harris contract beneficial to the United States, and the Postmaster-General is hereby authorized to include in this arrangement such a provision for the transportation of the letter-mails, only in the steamships of the said contractors running between New York and Chagres, and as in his opinion the public service may demand, and not exceeding in the whole the amount herein limited. Provided, that whenever a better route between the Atlantic and Pacific Oceans is established, the Secretary of the Navy and the Postmaster-General are authorized to agree with the present contractors for the Pacific line to change the terminus of the additional semi-monthly service hereby authorized, so as to secure the advantage of increased dispatch and economy, and in case the reduction in compensation for the change of service be not agreed on between the parties, the same shall be referred to Congress.

Now, therefore, in pursuance of said law, it is hereby agreed between the United States of America, acting in this behalf by their Secretary of the Navy and their Postmaster-General, of the one part, and the Pacific Mail Steamship Company, acting in this behalf by William H. Aspinwall, their President, assignee of the A. Harris contract, of the other part.

1*st.* That the said Company shall, within one year from this date, increase the said Pacific line to six ocean steamships, four of which shall severally be of not less than one thousand tons burthen, and the other two of not less than six hundred tons burthen each, and all of which shall, in all respects, conform to the requisitions of said contract, and employ them when said line shall be so increased in transporting the United States and foreign mails from Panama to San Diego, Monterey, San Francisco, and Astoria, in Oregon, touching, if practicable, at Scottsville, near the mouth of the Umpqua River, and at such other intermediate ports on the coast of Oregon or California as in the opinion of the Postmaster-General the public may require.

2*d.* That the ships thus provided and in service shall perform a regular semi-monthly service or delivery of mails at each of the ports aforesaid, leaving Panama and Astoria twice each month, at such time as may be from time to time prescribed by the said Secretary of the Navy and the Postmaster-General, and making the said trips from Panama to Oregon and from Oregon to Panama in not more than twenty-five days from port to port, stopping and delivering the mails at and into the post-offices at all the intermediate ports above mentioned, into the post-office at the northern terminus of the route, and to such other contract office or agent at Panama as the Post-office Department shall direct.

3*d*. That for the increased service thus rendered beyond the stipulations of the original contract with the said Harris, the said company shall be paid by the Secretary of the Navy the sum of one hundred and forty-nine thousand two hundred and fifty dollars ($149,250) per annum, payable quarterly, at the expiration of each quarter on the last days of March, June, September, and December, beginning on the commencement of such service after such line is increased as aforesaid, and ending on the last day of September, 1858, being the termination of said A. Harris's contract.

4*th*. That the Postmaster-General shall have the right of sending any letter mails by any of the ships the said Company may run between New York and Chagres, at any time during the period aforesaid, without any additional charge to the Government.

5*th*. And it is hereby further agreed that the said Company shall receive on board each ship, and suitably accommodate, without charge to the United States Government, an agent to be appointed by the Postmaster-General, who shall have charge of the mails to be transported therein, whenever the Postmaster-General shall so direct, and that safe and convenient apartments on board said ship shall be provided for said mails and agent by the said Company; and further, that the said Company will convey, without additional charge, post-office blanks, mail-bags, mail-locks and keys, and also the special agents of the Post-Office Department, on the exhibition of their credentials from the Postmaster-General.

6*th*. It is hereby further stipulated and agreed by the said Company, that the said Postmaster-General may, from time to time, make any reasonable change in the schedule of running or time of arrivals and departures, and may also, from time to time, increase the service, he allowing an increase of compensation within the restrictions imposed by law for the additional service required.

7*th*. It is hereby also stipulated and agreed by the said Company, that in all cases there is to be a forfeiture or deduction of the pay of a trip when the trip is not run; a forfeiture or deduction of at least one-fourth part of it when the running is so far behind time as to lose connection with a depending mail, unless not caused by neglect or want of proper skill or misconduct; and a forfeiture or deduction of a due proportion of it when a grade of service is rendered inferior to the mode of conveyance above stipulated; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure and importance of the mail. Also, that fines may be imposed upon the Company, unless the delinquency be satisfactorily explained to the Postmaster-General in time, for failing to take from or deliver the mails into the post-offices at Panama, Astoria, and the intermediate ports above mentioned; for suffering it to be wet, injured, lost, or destroyed while on board of their steamships; for carrying it in a place or manner that exposes it to depredation, loss, or injury, by being wet or otherwise; for refusing, after demand and tender of proper compensation, not exceed-

the Isthmus, by increasing the trips of the Pacific line to semi-monthly. Provided, that the said increased service on the Pacific side shall be at a rate not exceeding seventy-five per cent. upon the amount now paid for Pacific service, and to be performed in steamships built according to the specifications, and subject to all the clauses of the A. Harris contract beneficial to the United States, and the Postmaster-General is hereby authorized to include in this arrangement such a provision for the transportation of the letter-mails, only in the steamships of the said contractors running between New York and Chagres, and as in his opinion the public service may demand, and not exceeding in the whole the amount herein limited. Provided, that whenever a better route between the Atlantic and Pacific Oceans is established, the Secretary of the Navy and the Postmaster-General are authorized to agree with the present contractors for the Pacific line to change the terminus of the additional semi-monthly service hereby authorized, so as to secure the advantage of increased dispatch and economy, and in case the reduction in compensation for the change of service be not agreed on between the parties, the same shall be referred to Congress.

Now, therefore, in pursuance of said law, it is hereby agreed between the United States of America, acting in this behalf by their Secretary of the Navy and their Postmaster-General, of the one part, and the Pacific Mail Steamship Company, acting in this behalf by William H. Aspinwall, their President, assignee of the A. Harris contract, of the other part.

1*st*. That the said Company shall, within one year from this date, increase the said Pacific line to six ocean steamships, four of which shall severally be of not less than one thousand tons burthen, and the other two of not less than six hundred tons burthen each, and all of which shall, in all respects, conform to the requisitions of said contract, and employ them when said line shall be so increased in transporting the United States and foreign mails from Panama to San Diego, Monterey, San Francisco, and Astoria, in Oregon, touching, if practicable, at Scottsville, near the mouth of the Umpqua River, and at such other intermediate ports on the coast of Oregon or California as in the opinion of the Postmaster-General the public may require.

2*d*. That the ships thus provided and in service shall perform a regular semi-monthly service or delivery of mails at each of the ports aforesaid, leaving Panama and Astoria twice each month, at such time as may be from time to time prescribed by the said Secretary of the Navy and the Postmaster-General, and making the said trips from Panama to Oregon and from Oregon to Panama in not more than twenty-five days from port to port, stopping and delivering the mails at and into the post-offices at all the intermediate ports above mentioned, into the post-office at the northern terminus of the route, and to such other contract office or agent at Panama as the Post-office Department shall direct.

3*d*. That for the increased service thus rendered beyond the stipulations of the original contract with the said Harris, the said company shall be paid by the Secretary of the Navy the sum of one hundred and forty-nine thousand two hundred and fifty dollars ($149,250) per annum, payable quarterly, at the expiration of each quarter on the last days of March, June, September, and December, beginning on the commencement of such service after such line is increased as aforesaid, and ending on the last day of September, 1858, being the termination of said A. Harris's contract.

4*th*. That the Postmaster-General shall have the right of sending any letter mails by any of the ships the said Company may run between New York and Chagres, at any time during the period aforesaid, without any additional charge to the Government.

5*th*. And it is hereby further agreed that the said Company shall receive on board each ship, and suitably accommodate, without charge to the United States Government, an agent to be appointed by the Postmaster-General, who shall have charge of the mails to be transported therein, whenever the Postmaster-General shall so direct, and that safe and convenient apartments on board said ship shall be provided for said mails and agent by the said Company; and further, that the said Company will convey, without additional charge, post-office blanks, mail-bags, mail-locks and keys, and also the special agents of the Post-Office Department, on the exhibition of their credentials from the Postmaster-General.

6*th*. It is hereby further stipulated and agreed by the said Company, that the said Postmaster-General may, from time to time, make any reasonable change in the schedule of running or time of arrivals and departures, and may also, from time to time, increase the service, he allowing an increase of compensation within the restrictions imposed by law for the additional service required.

7*th*. It is hereby also stipulated and agreed by the said Company, that in all cases there is to be a forfeiture or deduction of the pay of a trip when the trip is not run; a forfeiture or deduction of at least one-fourth part of it when the running is so far behind time as to lose connection with a depending mail, unless not caused by neglect or want of proper skill or misconduct; and a forfeiture or deduction of a due proportion of it when a grade of service is rendered inferior to the mode of conveyance above stipulated; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure and importance of the mail. Also, that fines may be imposed upon the Company, unless the delinquency be satisfactorily explained to the Postmaster-General in time, for failing to take from or deliver the mails into the post-offices at Panama, Astoria, and the intermediate ports above mentioned; for suffering it to be wet, injured, lost, or destroyed while on board of their steamships; for carrying it in a place or manner that exposes it to depredation, loss, or injury, by being wet or otherwise; for refusing, after demand and tender of proper compensation, not exceed-

ing a due proportion of the pay, to convey a mail by any steamship which the Company runs, or is concerned in running, on the route, beyond the number of trips above specified, or for not arriving at the time set in the schedule, unless not caused by neglect or want of proper skill, or by misconduct; and for setting up or running an express to transmit letters or commercial intelligence in advance of the mail; or for transporting, knowingly, or after being informed by the Department, or its agents, any one who shall transport, or be engaged in transporting letters or mail matter in violation of the laws of the United States, a penalty of five hundred dollars may be exacted for each offence and for each article so carried. And it is also understood and agreed that no payment is to be made under this contract at any time before Congress shall have made the appropriation necessary for that purpose, but payment shall be made according to such appropriation.

8th. The parties hereto reserve the adjustment of the terms for the service on a better route between the two oceans until such a route is established, and the extent of the change can be ascertained.

And it is further expressly stipulated and agreed that no member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom, except as stockholders in said company, and according to the provisions of the second section of an act of Congress passed April 1st, 1808, entitled "An Act concerning Public Contracts."

In testimony of all which agreements and stipulations the said United States have caused this contract to be executed in their behalf by their Secretary of the Navy, and the Postmaster-General, and the said Pacific Mail Steamship Company have hereunto affixed their corporate seal, and caused the same to be attested by the signature of their President, this thirteenth day of March, Anno Domini one thousand eight hundred and fifty-one.

[SEAL.] (S'd.) WILL. A. GRAHAM,
Sec'y of the Navy.

[SEAL.] N. K. HALL,
Postmaster-General.

[SEAL.] WM. H. ASPINWALL,
President of the Pacific Mail Steamship Company.

Signed, sealed, and delivered in presence of
JOHN ETHERIDGE as to
WM. A. GRAHAM, Sec'y of the Navy.
FITZ HENRY WARREN as to
N. K. HALL, Postmaster-General.
J. M. CATLIN as to signature of
WM. H. ASPINWALL, President.

That the steamships Oregon, California, Columbia, Tennessee,

Northerner, and Panama, hereinbefore named, were all built under and in accordance with the terms and conditions of the contract so as aforesaid made by the Secretary of the Navy, with Arnold Harris; that they have all been duly accepted by the United States Government, and are now, and were, at and prior to the 1st day of March, 1851, employed in the trasportation of the United States Mails between the ports of Panama and San Francisco, and San Francisco and the ports of the Territory of Oregon.

And the plaintiffs further show that, by sundry other public acts of Congress, the steamships hereinbefore last mentioned, are liable at any moment to be taken by the Government of the United States and be converted into vessels of war.

And the plaintiffs further show that taxes have been assessed upon all the capital of the plaintiffs represented in and by all the steamers hereinbefore named in the State of New York, under and by virtue of the laws thereof, from the time when the said steamships were severally first employed by the plaintiffs to the present time, and that such taxes have been duly paid by the plaintiffs, and continue so to be paid.

And the plaintiffs further show that all said steamships have been assessed by the State of California, and County of San Francisco, for the year beginning July first, one thousand eight hundred and fifty-one, and ending June thirtieth, one thousand eight hundred and fifty-two, and taxes imposed thereon by the said State of California, and County of San Francisco, claiming the same as annually due, under an act of the Legislature of said State, entitled "An Act prescribing the mode of assessing and collecting Public Revenue," passed May first, 1851.

That the assessment of said steamships was made in accordance with a valuation thereof given to the assessor of San Francisco County, by Eben. Knight, the agent of said Company in California, under oath, but that said valuation was made by said Eben. Knight, not voluntarily, but in obedience to the demand of said assessor, and for the sole purpose of relieving the said steamships from the penalties imposed by said act in all cases of non-compliance with such demand.

That the taxes so assessed and imposed amounted to the sum of eleven thousand nine hundred and sixty-two dollars and fifty cents, as will now fully appear by reference to the aforesaid assessment, a copy of which is as follows:—

Pacific Mail Steamship Company.

State and County Taxes.

Description of Property Taxed.	Amount of Assessment.	State Tax 65c. on $100.	County $1 on $100	Total Tax.
Steamship Oregon,	$75,000			
" Panama,	75,000			
" California,	75,000			
" Tennessee,	100,000			
" Columbia,	60,000			
" Northerner,	60,000			
" Columbus,	70,000			
" Isthmus,	50,000			
" Carolina,	50,000			
" Fremont,	50,000			
" Republic,	60,000			
	$725,000	$4,712 50	$7,250	$11,962 50
Levy, advertising, and Com's, &c.				465 87
				$12,428 37

SAN FRANCISCO, *5th March*, 1853.

Received from Pacific Mail Steamship Company the sum of eleven thousand nine hundred and sixty-two dollars and fifty cents, being the amount of State and County Taxes for 1851 to 1852, on the above-named property, and commissions, &c., on same being paid under protest of this date, and to avoid sale of steamer Columbia levied on.

$11,962 50
465 87.

JOHN C. HAYS,
Sheriff.

J. D. GALBRAITH,
Deputy and Collector.

And the plaintiffs further show that the aforesaid steamship Columbia having been levied upon and advertised for sale by the defendant for the payment of said taxes so assessed, and for damages and costs amounting to the additional sum of four hundred and sixty-five dollars and eighty-seven cents, and the plaintiffs having failed, after proper application to the United States District Court for the Northern District of California, to obtain an injunction staying said sale, they, the plaintiffs, in order to prevent a sale of said steamship, paid under protest to the defendant, the duly authorized officer of the

said State and County for the collection of said taxes, the sum of twelve thousand four hundred and twenty-eight dollars and thirty-seven cents on the fifth day of March, one thousand eight hundred and fifty-three; that said protest was reduced to writing and served by the plaintiffs upon the defendant at the time of said payment, and that a copy of said protest is as follows:—

To JOHN C. HAYS, Sheriff of San Francisco County, and Collector of the State and County Taxes.

SIR: You will please take notice that the Pacific Mail Steamship Company, in paying the State and County taxes assessed upon their steamers for the years 1851, 1852, to wit: twelve thousand four hundred and twenty-eight dollars and thirty-seven cents, protest against the legality of said taxes and assessment, and deny that said steamers are liable to be taxed or assessed under the laws of this State, and they protest that the laws of this State, under which said assessment was made and said taxes laid, did not apply to the said steamers, and that said steamers were not subject to taxation under said laws, because—

1*st*. The said Pacific Mail Steamship Company, the owners of them have never been, and were not when said assessment was made and said taxes laid, residents within the State of California.

2*d*. That said steamships have always been, and still are, only transitory within the State of California.

3*d*. That said steamers are only ocean steamers, employed solely in navigating the waters of the Pacific Ocean, and in plying from the port of San Francisco to the port of Panama, and the intermediate ports to the south, and that of Astoria to the north.

And they further protest that because said steamers have been taxed in the State of New York, where the principal officers of said Company reside, where its principal office is located, and its business carried on, and under the laws of which State the said Company has been incorporated, and because such taxes have been paid by said Company in the State of New York, the State of California and county of San Francisco have no right or power to levy or assess taxes upon said steamers.

And they further protest that inasmuch as the steamships Oregon, Panama, California, Tennessee, Columbia, and Northerner were built under a contract with the Navy Department of the United States Government, and are liable, under such contract, to be at any moment taken by said Government, and converted into vessels of war, and inasmuch as said named steamships were at the time of making said assessment, and laying said taxes, and still are employed in the transportation of the United States mails, under a contract with the Post-Office Department of the said United States Government, they were not and are not the subject of assessment or taxation by the State of California or county of San Francisco.

Whereupon the said Pacific Mail Steamship Company protest

against the whole of said taxes as illegal and unjust, and pay the sum not voluntarily, but because they are compelled to do so, and they hereby give notice that they will hold you responsible for the repayment of the same.

San Francisco, March 5, 1853.

(Signed) E. KNIGHT,
Agent Pacific Mail Steamship Co.

Received a copy of the above protest this 5th March, 1853, previous to payment of taxes.

JOHN C. HAYS,
Sheriff.

By J. D. GALBRAITH,
Deputy Sheriff.

And the plaintiffs aver that the assessment so made by the said State of California and county of San Francisco, and the taxes so imposed were wholly illegal, because none of said steamships were the subject of taxation by the State of California and county of San Francisco, or under any of the laws of the State of California.

Wherefore the plaintiffs allege that an action has accrued to them to have and demand from the defendant, the sum of money so as aforesaid paid by them to him, and they therefore demand judgment against the defendant for the said sum of twelve thousand four hundred and twenty-eight $\frac{87}{100}$ dollars, with interest thereon from the fifth day of March, 1853, at the rate of ten per cent. per annum, that being the legal rate of interest allowed by the laws of the State of California, and such other or further relief, or both, as may be meet in the premises.

McALLISTER, SMITH & ROSE,
Atty's for Plaintiffs.

NORTHERN DISTRICT OF CALIFORNIA, ss:

Ebenezer Knight being duly sworn, says that he is the authorized agent and attorney in fact of the Pacific Mail Steamship Company; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true; and he further says that the Pacific Mail Steamship Company, and its President, Directors, and Stockholders, are all residents of the State of New York, and are none of them within this District.

E. KNIGHT.

Sworn before me this 15th day of August, 1853.

HENRY B. JONES,
U. S. Comm'r.

DISTRICT COURT OF THE UNITED STATES,
For the Northern District of California:

PACIFC MAIL STEAMSHIP COMPANY
vs.
JOHN C. HAYS.

And now the defendant, John C. Hays, comes and demurs to plaintiff's complaint.

1*st*. That this Court has no jurisdiction over the person of the defendant, or cause of action in this case.

2*d*. That plaintiff have not legal capacity to sue in this Court.

3*d*. That the complainant does not state facts sufficient to constitute a cause of action.

And as to the first ground of demurrer, defendant assigns for cause, that if personally liable to suit at the instance of plaintiff, the Pacific Mail Steamship Company, as and for the cause set forth in their complaint, he is so liable only in the State Courts, and not in this Court.

And as to the second, 1*st*. That, as a foreign corporation, plaintiff is wanting in legal capacity to sue in this Court. 2*d*. That, as a foreign corporation, plaintiff is wanting in legal capacity to sue in this court upon a cause of action arising in this State.

And as to the third, 1*st*. That the said steamships being owned in New York, and there registered, affords no exemption from the payment of taxes upon them under the laws of the State of California, as personal property of the Company 2*d*. That their being built under a contract with the United States, and subject at its pleasure on payment to become the property of the United States, affords no exemption from the payment of taxes in this State, under the laws thereof, as personal property, while they remain the property of the Company. 3*d*. That their being employed in the mail service of the United States, affords no exemption to their owners from the payment of taxes thereon in this State as personal property, under the laws thereof. 4*th*. That their being taxed as personal property in New York, affords no exemption from their being taxed as such in this State, under the laws thereof, where they are employed, and not in New York, as shown in the complaint.

And therefore defendant prays judgment, whether he is bound in law to make further or other answer to plaintiff's complaint, and for his costs, &c.

Signed

S. C. HASTINGS,
H. H. BYRNE,
Att'ys for Def't.